

Utility Accommodation Policy

**MDOT Utility Accommodation Policy as Adopted by Transportation
Commission – February 25, 1986**

Policy for Longitudinal Use of Limited Access Right-of-Way by Utilities

**Special Permit Requirements – Utility Accommodation for Limited Access
Right-of-Way**

**MICHIGAN DEPARTMENT OF TRANSPORTATION
UTILITY ACCOMMODATION POLICY AS ADOPTED
BY TRANSPORTATION COMMISSION**

FEBRUARY 25, 1986

MICHIGAN DEPARTMENT OF TRANSPORTATION

UTILITY ACCOMMODATION POLICY

EFFECTIVE DATE FEBRUARY 25, 1986

I. PURPOSE

This policy is established to regulate the accommodation within state trunkline highway right of way of private lines and utility facilities, as defined in Part IV hereof.

The legal authority and the conditions under which such facilities will be permitted on state trunkline highway right of way are set forth herein. Recognized are AASHTO publications entitled "A Policy on the Accommodation of Utilities Within Freeway Right of Way," copyright 1982 and "A Guide for Accommodating Utilities on Highway Rights of Way," copyright 1981. In those circumstances where differences arise between the above publications and this policy, the conditions set forth herein shall apply.

It is not intended that this policy serve as the basis for determining financial responsibility for replacing or adjusting facilities. It is limited to matters which are the responsibility of the Department as jurisdictional authority of the state trunkline highway system and its safe operation.

II. EXISTING POLICY

- A. Commission Policy 1100.10 dated July 27, 1977 entitled Control of Rights-of-Way Policy provides that:

The Commission shall control the use of State rights of way, including scenic rights of way, non-motorized vehicular rights of way and such operating and non-operating railroad rights of way as may be acquired by the Commission.

Such control shall be in accordance with Federal code and regulations and appropriate State of Michigan statutes.

- B. Commission policy 1100.56 dated June 27, 1979 entitled Regulation of Utilities provides that:

The Department will provide for the regulation or rearrangement of utility installations that interfere with the operation, maintenance, or improvement of state highways and will regulate the installation of any new facilities on highway right of way.

III. LEGAL AUTHORITY

- A. The Department's authority with respect to the state trunkline highway system emanates from the State Constitution and various state acts including Act 51, Public Acts of 1951, Section 1a, MCL 247.651a, which provides as follows, and grants to the Department the permissive right to regulate and control the use of state trunkline highway right of way:

"All state trunkline highways now or hereafter established as provided by law, shall be constructed, maintained, and improved in accordance with the provisions of this act under the direction, supervision, and control of the state highway commissioner."

- B. The Department's liability with respect to the state trunkline highway system emanates from Act 170, Public Acts of 1964, Section 2, MCL 691.1402 which provides as follows:

"Each governmental agency having jurisdiction over any highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. Any person sustaining bodily injury or damage to his property by reason of failure of any governmental agency to keep any highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for

travel, may recover the damages suffered by him from such governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in Section 21, Chapter 4 of Act No. 283 of the Public Acts of 1909, as amended, being Section 224.21 of the Compiled Laws of 1948. The duty of the state and the county road commissioners to repair and maintain highways, and the liability therefor, shall extend only to the improved portion of the highway designed for vehicular travel and shall not include sidewalks, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. No action shall be brought against the state under this section except for injury or loss suffered on or after July 1, 1965. Any judgment against the state based on a claim arising under this section from acts or omissions of the state highway department shall be payable only from restricted funds appropriated to the state highway department or funds provided by its insurer."

- C. The statutory authority of telegraph, telephone, power, and other public utility companies and cable television companies and municipalities to construct and maintain facilities upon, over, across, or under state trunkline highway right of way emanates from Act 368 Public Acts of 1925 as amended, Sections 13, 14, and 15, MCL 247.183-185, which provide as follows:

Sec. 13. Telegraph, telephone, power, and other public utility companies, and cable television companies and municipalities are authorized to enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers and like structures upon, over, across, or under any public road, bridge, street, or public place and across or under any of the waters in this state, with all necessary erections and fixtures therefor. Every such telegraph, telephone, power, and other public utility company, cable television company and municipality, before any of the work of such construction and erection shall be commenced, shall first obtain the consent of the duly constituted authorities of the city, village, or township through or along which said lines and poles are to be constructed and erected.

Sec. 14. In case it is proposed to construct a telegraph, telephone, power line, or cable television line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over, or under a county road or bridge, the consent of the board of county road commissioners shall be obtained before the work of such construction shall be commenced; and in case it is proposed' to construct a telegraph, telephone, power line, cable television line, pipe line, wires, cables, poles, conduits, sewers or like structures, upon, over, or under a state trunkline highway, or upon, over, or under any bridge that the state has participated in constructing, the consent of the state highway commissioner shall be obtained before the work of such construction shall be commenced.

Sec. 15. The construction and maintenance of all such telegraph, telephone, and power lines, cable television lines, pipe lines, wires, cables, poles, conduits, sewers and like structures shall be subject to the paramount right of the public to use such public places, roads, bridges, and waters, and shall not interfere with other public uses thereof and nothing herein contained shall be construed to authorize any telegraph, telephone, power, or other public utility company, cable television company or municipality to cut, destroy, or in anywise injure any tree or shrub planted within any highway right of way or along the margin thereof, or purposely left there for shade or ornament or to bridge across any of the waters of this state. Nor shall anything in this section Of sections 13 and 14 be construed to grant any rights whatsoever to any public utilities or cable television companies whatsoever, nor to impair anywise any existing rights granted in accordance with. the constitution or laws of thi~ state, but shall be construed as a regulation of the exercise of all such rights.

IV. DEFINITIONS

AASHTO

American Association of State Highway and Transportation Officials.

Department

Michigan Department of Transportation

FHWA

U.S. Department of Transportation, Federal Highway Administration

Freeway

A divided arterial highway with full control of access

Permit

The Department's permit to construct, operate, use and/or maintain within the state trunkline right of way.

Private Lines

Privately owned facilities which convey or transmit the commodities described below in Utility Facilities and/or Utilities, but are devoted exclusively to private use.

Rights of Way

Real property or interests therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway in which federal-aid or federal highway funds are or may be involved in any stage of development. Lands acquired under 23 U.S.C. 319(b) (scenic strips - 1965 Highway Beautification Act) shall be considered to be highway rights of way as shall the following:

- Lands acquired for scenic areas adjacent to highways .
- Lands acquired for rest areas, roadside parks, scenic turnouts or overlooks, or acquired to provide access to lakes and rivers.

State Trunkline Highways

Those roadways, irrespective of designation, which are under the jurisdiction of the Michigan Department of Transportation.

Utility Facilities and/or Utilities

Includes all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including fire and police signal systems and street lighting systems, which directly or indirectly serve the public. The term "utility" means the utility company, i.e., any person or private or public entity owning and/or operating utility facilities as defined in this paragraph, including any wholly owned or controlled subsidiary.

V. APPLICATION AND SCOPE

This policy shall be the basis for the evaluation and consent by the Department to requests to construct, maintain or operate upon, over, across, or under state trunkline highways, private lines and utility facilities as herein defined. This policy is applicable only to state trunkline highways, i.e., those highways under the jurisdiction of the Michigan Department of Transportation.

VI. EFFECTIVE DATE

This statement of policy and procedure shall be effective upon a date certain to be determined by the Michigan Department of Transportation after receipt of necessary FHWA approval.

VII. PROCEDURES

A. CONSENT AND APPROVAL

1. All installation, operation, and maintenance of private lines and utility facilities made on state trunkline highway right of way shall be subject to the consent of the Department. This consent shall be granted by the Department in accordance with Department permit procedures unless otherwise authorized by agreement or property right. It is the responsibility of the party requesting use of the trunkline right of way to apply for and obtain the necessary permits from the Department. Where a utility has a compensable interest in the land occupied by its facilities and such land is to be jointly used for highway and utility purposes, the Department and the utility shall agree in writing as to the obligations and responsibilities of each party.
2. In addition to Department consent the following uses of state trunkline highway right of way shall also be subject to prior review and approval of the FHWA.
 - a. Any utility or private line use not in accordance with this policy.
 - b. Longitudinal installations on limited access right of way by public utilities and private lines.
 - c. Breaches of interstate right of way for the purpose of providing access to adjacent lands.
 - d. Those situations for which the FHWA requires an airspace agreement.

B. GENERAL CONDITIONS

1. **Limited Access Right of Way** - Private lines and utility facilities will not be allowed to longitudinally occupy the right of way of controlled or limited access highways without consideration of feasible alternatives. A finding by the Department of unusual hardship or other extenuating circumstances will be required to consider such occupancy.

Where necessary, construction of private lines and utility facilities may be allowed across limited access highways preferably at right angles to and under the roadway. Crossings should be for the purpose of serving a general area rather than providing individual services unless extenuating circumstances necessitate such crossings.

2. **Non-Limited Access Highways** - Occupancy of non-limited access right of way may be allowed based on considerations for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right of way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.
3. The evaluation by the Department of any request to occupy state trunkline highway right of way will be predicated upon, but not limited to, those items set forth in Section VII C entitled REQUIREMENTS.

C. REQUIREMENTS

1. Consideration shall be given by the Department to the effect of the requested occupancy and use of the state trunkline highway rights of way on the following:
 - a. The structural integrity of the highway.
 - b. The reasonably safe operation and maintenance of the highway.
 - c. The aesthetic quality of the highway and the reasonable protection of roadside vegetation.
 - d. The costs and/or difficulty of highway construction and maintenance.

2. Facilities allowed on state trunkline highway right of way will be placed in a manner which will not impair the highway or adversely affect highway or traffic safety.
3. The horizontal and vertical location requirements and clearances for the various types of utilities will be adequate to insure compliance with clear roadside guidelines for the particular highway type involved and shall also be in conformance with current government and industry codes required by law or regulation.
4. Location of facilities will be guided by the AASHTO publication entitled "Guide for Selecting, Locating, and Designing Traffic Barriers" dated 1977.
5. Location of light standards and utility poles on free access roadways will be governed by the current Department guideline entitled "Guideline for Placement of Light Standards and Utility Poles on Free Access Roadways."
6. The party requesting consent shall take, provide, and maintain all necessary precautions to prevent injury or damage to persons and property from their operations and shall use traffic control devices which are in accordance with the Michigan Manual of Uniform Traffic Control Devices.
7. Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right of way; and limitations on the activities within the right of way will be prescribed within the conditions of the permit as determined necessary by the Department to protect the state trunkline highway interest.
8. Facilities allowed on state trunkline highway right of way will be maintained in a manner which will not impair the highway or adversely affect highway or traffic safety.
9. Maintenance of those facilities crossing limited access highways shall be from city streets, county roads, service roads, and approved openings provided in limited access right of way fences unless such alternatives are not practical as determined by the Department. In those special cases where the Department concurs that maintenance of facilities must be performed from within limited access right of way, a prior permit will be obtained from the Department setting forth the conditions for policing and other controls to protect highway users.
10. Any use of state trunkline highway right of way within areas of scenic enhancement, such as scenic strips, overlooks, rest areas, recreation areas, the right of way of highways adjacent thereto, and the right of way of highways which pass through public parks and historic sites, as described under Section 138, Title 23, United States Code, when such right of way has been acquired with federal funds, will be in compliance with 23 CFR 645.209(h)
11. Use of state trunkline right of way for any purpose will require prior Department approval.

D. EMERGENCY OPERATIONS

1. All operations involving state trunkline highway right of way use shall be subject to the applicable provisions of the Emergency Preparedness Act, Act 390 Public Acts of 1976, MCL 30.401 et seq.
2. In time of disaster or emergency, or when utility lines or facilities are so damaged as to constitute a danger to life and property of the public, access to the same may be had by the most expeditious route and the work is to be done in a manner which will provide the travelling public with maximum possible safety. Notice of such situation shall be given to the nearest police authority and the Department as soon as can reasonably be done under the circumstances. The surfaced area of the right of way may be used to approach the distressed lines or facilities

and the surfaced shoulder may be used for temporary parking provided all reasonable provisions for safety of the general travelling public are made.

VIII. CLOSING


This statement of policy and procedure will not be interpreted or applied in a manner in violation of, or inconsistent with state law.

**APPROVED STATE TRANSPORTATION COMMISSION: FEBRUARY 25, 1986
IMMEDIATE EFFECT**



POLICY FOR LONGITUDINAL USE OF
LIMITED ACCESS RIGHT OF WAY BY UTILITIES.

(Adopted February 23, 1995)

 <div>COMMISSION</div> <div>POLICY</div>	EFFECTIVE DATE 02-23-95	IDENTIFIER C 1000.14A
	RESPONSIBLE ORGANIZATION Engineering Services	SUPERSEDES CP 1000.14 DATED 06-08-94
SUBJECT: Longitudinal Use of Limited Access Right-of-way by Utilities		

REQUIREMENTS

- A. In addition to requirements generally applicable to occupancy of the right-of-way by utilities, any use of that designated limited access right-of-way will be in compliance with such special requirements for utility accommodation for longitudinal occupancy of limited access right of way as the department may determine, including, but not limited to:
1. A permit from the department is required for each control section, with a permit fee of \$1,000 per mile. A minimum total fee of \$5,000 for all permits pertaining to a single utility project will be charged.
 2. Use will be limited to only continuous type facilities which will not intermittently extend service outside the limited access right-of-way.
 3. Facilities allowed longitudinally within limited access right-of-way shall be underground and placed in a manner that will not increase highway maintenance costs for the state transportation department.
 4. The department reserves the right during the time any or all of the work is being performed to assign an inspector to protect the trunkline interest, and to charge the permittee all such costs incurred.
- B. The department may require installation of multiduct facilities for short distances where justified by field conditions.

Adopted by the State Transportation Commission February 23, 1995.

SPECIAL PERMIT REQUIREMENTS

UTILITY ACCOMMODATION FOR
LIMITED ACCESS RIGHT OF WAY

ADDITIONAL REQUIREMENTS FOR UTILITY ACCOMMODATION FOR LONGITUDINAL
OCCUPANCY OF LIMITED ACCESS RIGHT OF WAY

The department's current Utility Accommodation Policy, as described in the Policy for Longitudinal Use of Limited Access Right of Way by Utilities, allows for utilities to place facilities longitudinally within limited access right of way under certain conditions. Any occupancy must conform to the following:

I. GENERAL INFORMATION

- A. Normally, only utility companies, as approved by the department and governmental bodies, shall be allowed to place utility facilities in limited access right of way.
- B. All occupancy of trunkline right of way requires a permit or permits, along with an indemnification agreement or performance bond and liability insurance, in accordance with the department's current requirements.

II. LOCATION AND CONSTRUCTION CRITERIA

Compliance with the following location and construction criteria shall be required:

- A. Only continuous type facilities which will not intermittently extend service outside the limited access right of way will be allowed.
 - 1. Connections for service, distribution, or any other purpose, at department discretion, will only be allowed at grade separations, interchanges, the point of entrance and exit of the facility to the limited access right of way, or as the department may otherwise determine.
- B. Section 13(2) of Act 368 of P.A. of 1925 as amended, Section 247.183, Michigan Compiled Laws, restricts utility facilities within limited access highway right of way to underground facilities.
- C. The preferred location for a longitudinal facility is within an area along the outer fifteen feet of the right of way.
 - 1. If the outer fifteen feet would be harmed, as determined by the department, by the placement of such facilities, the department may allow them to be placed in an alternate location within the limited access right of way, such as outside the top of ditch slope or bottom of slope stake line or as otherwise determined by the department.
 - a. The utility facility may be placed within the median as an alternate location only under exceptional circumstances where utility facilities may be safely accommodated in the median. The use of the median may

be considered when the utility facility, all construction, and maintenance activities are beyond the clear recovery areas of either roadway such as split roadways. The placement of the utility within the median may not adversely affect the safety of either direction during construction and any future maintenance activity by the utility company.

2. The location of the applicant's utility facility within the fifteen-foot corridor will be determined by the department. Any ground, switching, pumping, booster, or like facility requiring regular maintenance activities shall be placed outside limited access right of way.

- a. Generally, the first applicant shall be placed as close as practicable to the right of way line.

Note that a utility, such as a sanitary sewer that is deeper than ten feet, may be placed on the side of the utility corridor towards the roadway.

- b. Subject to the department determining that an exception should be permitted, successive facilities shall be placed parallel and inward of the roadway from the first utility's facility.

- (1) The department, upon receiving a request to place a facility parallel to an already existing utility facility within the right of way, shall seek the existing utility's input of impacts on existing systems that the applicant utility would cause and shall consider such in any permit determination.

3. All approved applicants shall be required to place their facility within one and one-half (1.5) feet tolerance in either parallel direction of the specified proposed line for the utility.

D. Construction requirements shall be as follows:

1. All construction methods and materials shall conform to the current edition of "Standard Specifications for Construction," of the Michigan Department of Transportation.
 2. All utility facilities shall be constructed according to the requirements of the Public Service Commission, if applicable. In the event that the department's or Public Service Commission's specifications differ, the more restrictive specifications will prevail.

3. All facilities shall be placed underground according to department standards and specifications, and spaced according to current Michigan Public Service Commission rules and regulations for spacing and depth of cover.
 - a. All underground facilities shall not have less than four feet of cover between top of pavement and top of pipe when placed under a roadway surface or drainage course unless specifically approved by the department, and shall be placed with a protective cover or within a conduit capable of protecting the facility from damage due to excavation or maintenance activities.
 - b. All underground facilities shall be placed in such a way as to restrict the width of trench to a minimum by using sheeting or shoring or other approved methods.
4. Bore and jack construction methods shall be used under all existing pavements unless otherwise authorized by the department.
5. Permittees allowed to use limited access right of way longitudinally may be allowed access chambers (manholes). The spacing of these will be the normal distance for the type of facility being constructed and shall be subject to approval by the department.
 - a. Each access chamber cover shall have the identification marking to indicate the utility ownership.
 - b. Each top of an access chamber shall be at ground surface elevation.
 - c. Surface identification markers will be as required by the Michigan Public Service Commission rules or industry standards.
6. Any right of way fence removed or damaged during the construction phase shall be replaced by the permittee. Any landscape plantings or natural trees of value shall be replaced by the permittee with acceptable species of comparable value and at a location determined by the department.
7. Any inspection costs incurred by the department as a result of the inspection of the construction phase will be billed to the permittee.
8. The permittee shall furnish to the district utilities-permits office an as-constructed set of drawings no later than 90 days after completion of the work authorized by the permit. The exact vertical and horizontal location shall be shown. Such

drawings shall be certified by the person signing the permit application or the permit applicant's project engineer. Any changes in the facility by the permittee after the initial permit has been closed will require a new permit and a resubmittal of as constructed drawings and recertification.

9. Access to the construction area shall be from outside the limited access fence or interchanges unless the department specifically approves a plan for access from the roadway.

III. MAINTENANCE

- A. Maintenance of those facilities crossing or occupying limited access highways shall be from city streets, county roads, service roads, and approved openings provided in limited access right of way fences, unless such alternatives are not practical as determined by the department. In those special cases where the department concurs that maintenance of facilities must be performed from within limited access right of way, a prior permit will be obtained from the department setting forth the conditions for policing and other controls to protect highway users.
- B. Any right of way fence removed or damaged during inspection and maintenance operations for the utility shall be promptly replaced by the permittee. Any damage to landscaping, drainage, slopes, turf, including wheel ruts, shall be replaced or repaired in a timely manner.

IV. PROCEDURES

- A. The sequence for processing an application to longitudinally occupy limited access right of way shall be as follows:
 1. The applicant shall submit a preliminary plan of the proposed use of limited access right of way to the appropriate district utilities-permits office.
 - a. The plan may be submitted on an aerial mosaic or plan sheets.
 - b. The department, upon request of the applicant and at applicant's expense, may furnish plan sheets of the as-constructed freeway plans if available.
 2. The district office will conduct a field review of the site applied for and forward the preliminary plan to the Lansing utilities-permits office with recommendations. The district field review shall include a representative from Lansing utilities-permits office and appropriate district staff.

3. A department-wide review of the preliminary request will then be made through Lansing utilities-permits office to determine the feasibility and impact of allowing the requested use.
 4. Upon receiving approval of the preliminary request, the applicant shall prepare and submit a final detailed plan and permit form 2205 adhering to all the requirements to the appropriate district office.
- B. The environmental review of the proposed corridor is to follow current permit environmental review procedures.
1. The applicant shall submit to the department, with the request for initial review, a copy of any environmental report that is a part of their application for approval to the Public Service Commission.
- C. The applicant shall furnish, in detail, a maintenance plan of their facility for long-range maintenance and emergency maintenance.
1. Routine maintenance shall not affect freeway traffic or capacity.
 2. Emergency maintenance may affect freeway traffic. The plan must address the procedure the utility will use to properly maintain traffic.
- D. After obtaining approvals, Lansing office of utilities-permits will advise the appropriate district to issue the permit.